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October 4, 2018

**VIA ELECTRONIC FILING**

**The Honorable Jocelyn Boyd  
Chief Clerk/Administrator  
Public Service Commission of South Carolina  
101 Executive Center Drive  
Columbia, SC 29210**

**Re: Friends of the Earth and Sierra Club, Complainant/Petitioner v. South  
Carolina Electric & Gas Company, Defendant/Respondent  
Docket No. 2017-207-E**

**Request of the South Carolina office of Regulatory Staff for Rate Relief to  
SCE&G Rates Pursuant to S.C. Code Ann. § 58-27-920  
Docket No. 2017-305-E**

**Joint Application and Petition of South Carolina Electric & Gas Company  
and Dominion Energy, Inc. for review and approval of a proposed business  
combination between SCANA Corporation and Dominion Energy, Inc., as  
may be required, and for a prudency determination regarding the  
abandonment of the V.C. Summer Units 2 & 3 Project and associated merger  
benefits and cost recovery plans  
Docket No. 2017-370-E**

**Dear Ms. Boyd:**

**Enclosed for filing on behalf of South Carolina Electric & Gas Company  
{"SCE&G"} is a Response to South Carolina Office of Regulatory Staff's Motion to  
Compel Removal of Confidential Designation in the above-captioned dockets.**

**By copy of this letter and per the electronic service agreement in the above-  
captioned dockets, we are serving a copy of SCE&G's response on the parties of  
record.**

**(Continued ...)**

The Honorable Jocelyn Boyd  
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**If you have any questions, please advise.**

Very truly yours,



**Matthew W. Gissendanner**

**MWG/kms**

**Enclosure**

cc: All parties of record in Docket No. 2017-207-E  
All parties of record in Docket No. 2017-305-E  
All parties of record in Docket No. 2017-370-E  
(via electronic mail only w/enclosure)

**THE PUBLIC SERVICE COMMISSION OF SOUTH CAROLINA  
DOCKET NOS. 2017-207-E, 2017-305-E, AND 2017-370-E**

In Re: Friends of the Earth and Sierra Club,	)	
Complainants/Petitioners, v. South	)	
Carolina Electric & Gas Co.,	)	
Defendant/Respondent.	)	
	)	
In Re: Request of the South Carolina Office	)	<b>SOUTH CAROLINA ELECTRIC &amp;</b>
of Regulatory Staff for Rate Relief	)	<b>GAS COMPANY'S RESPONSE TO</b>
to SCE&G Rates Pursuant to S.C.	)	<b>SOUTH CAROLINA OFFICE OF</b>
Code Ann. § 58-27-920	)	<b>REGULATORY STAFF'S MOTION</b>
	)	<b>TO COMPEL REMOVAL OF</b>
In Re: Joint Application and Petition of	)	<b>CONFIDENTIALITY DESIGNATION</b>
South Carolina Electric & Gas	)	
Company and Dominion Energy,	)	
Incorporated for Review and	)	
Approval of a Proposed Business	)	
Combination between SCANA	)	
Corporation and Dominion Energy,	)	
Incorporated, as May be Required,	)	
and for a Prudency Determination	)	
Regarding the Abandonment of the	)	
V.C. Summer Units 2 & 3 Project	)	
and Associated Customer Benefits	)	
and Cost Recovery Plans	)	

South Carolina Electric & Gas Company ("SCE&G") hereby submits this Response to South Carolina Office of Regulatory Staff's ("ORS") Motion to Compel Removal of Confidentiality Designation ("Motion") in accordance with the Hearing Officer's October 2, 2018 Directive.

**INTRODUCTION**

ORS's Motion challenges SCE&G's confidentiality designations with respect to five categories of documents that SCE&G designated as confidential pursuant to its 2009 Nuclear Facility Master Confidentiality Agreement ("Master Agreement") with ORS. *See* Order No. 2018-73-H at 4 (ORS "agreed that the [2009] Master Agreement is still in effect and applies to information produced in these proceedings."). ORS claims that SCE&G's designations are

improper. However, SCE&G's designations were made in good faith, after a careful and thoughtful review in accordance with the Master Agreement as well as Section 58-4-55(D) of the South Carolina Code of Laws Annotated.

Nevertheless, SCE&G recognizes that the designation of certain materials as confidential will impact the presentation of evidence at the upcoming hearing. To simplify the hearing, and to address ORS's concerns as much as possible, SCE&G is willing to narrow the scope of its confidentiality designations on documents within the specific categories identified by ORS in its Motion. As explained more fully below, SCE&G is willing to remove its confidentiality designations for documents in the specific categories of documents identified in ORS's Motion to the extent that these documents do not contain information related to trade secrets, commercially sensitive information that would place SCE&G at a competitive disadvantage, personally identifiable information the disclosure of which would unreasonably invade personal privacy, or information which the Company is under a contractual obligation to protect from disclosure. SCE&G has begun a process to evaluate its prior designations in this regard, and it will notify ORS of its revised confidentiality designations as soon as possible.

### **BACKGROUND**

SCE&G and ORS entered into a Master Agreement on confidentiality on July 21, 2009. *See SCE&G's Resp. to Motion to Compel Discovery Responses and Production by SCE&G and Dominion Energy at Ex. 35.* Under the Master Agreement, ORS agreed that confidentiality would be determined by SCE&G and would include:

commercially valuable information, non-public information, including but not limited to: all internal rate methodologies, accounting documents, technical documents, project management methodologies, detailed project schedules or other schedules or documents that could provide commercial leverage to contractors or suppliers to the project if disclosed,

commercially-sensitive pricing information and pricing provisions specifically as contained in the Engineering, Procurement and Construction Contract for V.C. Summer Nuclear Station Units 2 & 3, any and all intellectual property rights, financial information, trade secrets as defined under common law and S.C. Code Ann. § 39-8-20(5) [], know-how, plans, methods, processes, feasibility documents, planning documents, marketing documents, evaluative material and documents, documents and information related to competition, customer information and data, strategic business plans, or documents of any nature . . . and any and all copies thereof marked as being confidential by SCE&G whether disclosed before or after the date of this Agreement.

Master Agreement, ¶ 2. ORS further agreed that “CONFIDENTIAL INFORMATION may include information which the Company is under a contractual obligation to protect from disclosure.” *Id.* As the Hearing Officer noted in his June 18, 2018 Directive, ORS has “agreed that the Master Agreement is still in effect and applies to information produced in these proceedings.” Order No. 2018-73-H at 4. SCE&G, therefore, relied on the Master Agreement’s definition of “confidential information” as well as ORS’s representations to the Commission in deciding what information should be designated as confidential.

On October 1, 2018, ORS filed the instant Motion challenging SCE&G’s confidentiality designations and asking the Commission “to compel SCE&G to identify specific documents and portions of depositions with legitimate claims of confidentiality” within seven days. Motion at 6-7. The Motion does not discuss or even cite the Master Agreement on confidentiality.

### **DISCUSSION**

#### **I. SCE&G’s Confidentiality Designations were Made in Good Faith, in Accordance with the Master Agreement.**

The Master Agreement and Section 58-4-55 of the South Carolina Code of Laws Annotated govern the confidentiality of documents produced by SCE&G to ORS in this proceeding. *See* Order No. 2018-73-H at 4 (ORS has “agreed that the Master Agreement is still in effect and applies

to information produced in these proceedings.”). The Master Agreement requires SCE&G to “make a good-faith determination that [] material contains or discloses Confidential Information” before designating it as confidential. Master Agreement, ¶ 3. **SCE&G has done so.**

SCE&G carefully assessed each document to determine whether it contained confidential information as defined by Paragraph 2 of the Master Agreement. For example, SCE&G appropriately used a confidential designation for documents that contained information that it is contractually obligated to protect.<sup>1</sup> *See* Master Agreement, ¶ 2 (“CONFIDENTIAL INFORMATION may include information which the Company is under a contractual obligation to protect from disclosure”). SCE&G also applied a confidential designation to documents containing non-public financial information about the company. *See id.* (including “financial information”). SCE&G also used such a designation on documents containing information that could harm SCE&G’s position in future negotiations with contractors or suppliers. *See id.* (including “documents that could provide commercial leverage to contractors or suppliers to the project if disclosed”). In addition, SCE&G designated documents as confidential if they contained analyses of information that is confidential under the Master Agreement. *See id.* (“Any calculations, computations, compilations, notes, or analyses of the Confidential Information conducted, performed, or recorded in whatever form shall be marked as Confidential Information and treated as such unless otherwise agreed by the parties.”). These decisions were made in good faith and in reliance on the definition of confidentiality agreed to by ORS. Because SCE&G complied with its obligations under the Master Agreement, ORS’s claims of “abuse” are unfounded.

## **II. SCE&G is Willing to Narrow the Scope of its Designations in Preparation for the Hearing.**

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<sup>1</sup> SCE&G is a party to numerous agreements that restrict the disclosure of information.

Notwithstanding this good-faith basis for designating material as confidential, SCE&G recognizes the complexities of abiding by these designations in the context of a public hearing. To minimize burden on the PSC and the parties to these proceedings, and in a further show of good faith, SCE&G is willing to review the designations it has applied on the documents within the categories the ORS mentioned in the Motion and narrow the scope of its confidentiality designations. SCE&G will focus its designations on documents that contain information related to trade secrets, commercially sensitive information that would place SCE&G at a competitive disadvantage, personally identifiable information the disclosure of which would unreasonably invade personal privacy, or information which the Company is under a contractual obligation to protect from disclosure.

SCE&G has begun its assessment of the confidentiality designations for the documents identified by ORS in its Motion. As to the attachments to ORS's Motion, SCE&G will agree to remove the confidentiality designations it previously applied to those documents. The volume of remaining documents that must be reviewed is substantial – over 10,000 documents. While SCE&G is mindful of the timing constraints faced by both parties in light of the upcoming hearing, SCE&G cannot conduct a meaningful assessment of the documents in the amount of time ORS requested in its Motion. SCE&G therefore proposes a deadline of October 26th to provide ORS with its revised confidentiality designations, using the guidelines as set forth above.

Respectfully submitted this 4th day of October, 2018.



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